

REMARKS

Claims 12, 18, 24-42 have been canceled without prejudice. Claims 13, 17, 19 and 20 have been amended. New claims 43-48 have been added. Claims 13-17, 19-23 and 43-48 are still pending.

The Examiner's courtesy in granting the undersigned a personal interview on February 9, 2006 is greatly appreciated. During the interview, the Examiner and the undersigned discussed each of the pending independent claims with respect to the cited prior art and other potentially relevant prior art, and tried to come up with language to distinguish all the known prior art. Applicant wishes to thank the Examiner for sharing her time, efforts and ideas in analyzing these claims.

First, claims 18, 25 and 30 have been canceled without prejudice, thereby rendering moot the Section 112 rejections of these claims.

Second, claim 13 has been amended to rewrite it into independent form and to clarify the connection of the lid portions. Thus, Applicant submits that all pending claims now meet the requirements of Section 112.

Third, independent claims 24-31 and 33-42 have been canceled without prejudice, thereby rendering moot the rejections of these claims.

Claims 12-19

Independent claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over USP 1,503,015 to Barnstead ("Barnstead") in view of USP 5,111,958 to Witthoeft ("Witthoeft"), and as being unpatentable over USP 6,626,317 to Pfiefer et al. ("Pfiefer") in view of Witthoeft. These rejections are respectfully traversed. Claim 13 has been rewritten into independent form, incorporating most of the limitations of claim 12 and other limitations that were discussed at the interview. Claim 12 has been canceled without prejudice. Claims 14-17, 19 and 48 depend from claim 13.

Amended independent claim 13 now includes the following limitations that are submitted to distinguish it from the cited Barnstead and Pfiefer patents:

1. Claim 13 recites a four-sided shell having a straight rear wall. In contrast, it was noted during the interview that the shell in Pfiefer's trash can has three sides, and does not have a straight rear wall. During the interview, the undersigned explained that the contrasting teachings in Pfiefer and Witthoeft would not lead a person skilled in the art to modify Pfiefer's trash can to reach the claimed assembly in claim 13. Specifically, Witthoeft's container is made of plastic, and uses the top of its rear wall 22 to hingedly connect a lid portion 18. Witthoeft's container does not even have a frame secured to the

top of a shell. In contrast, Pfiefer does not have a rear wall, and its lid portions 10, 11 are hingedly connected to side walls. Thus, the only portion of Witthoeft's teachings that may be relevant to claim 13 is the four-sided configuration of Witthoeft's container. However, it would be very difficult for a person skilled in the art to consolidate the contrasting teachings in Pfiefer and Witthoeft without using impermissible hindsight reconstruction, because Pfiefer's trash can has no rear wall, and Witthoeft teaches hingedly connecting a lid portion to a rear wall.

2. Claim 13 recites that the frame has an upper edge that has the same perimeter as the shell. In contrast, it was noted during the interview that the frame 2+4 in Barnstead has a four-sided upper edge and that the shell 1 in Barnstead has an oval shape, so the shell 1 and the frame 2+4 in Barnstead do not have the same perimeter. Thus, even a combination of Barnstead and Witthoeft will not yield the assembly claimed in claim 13.

Thus, Applicant respectfully submits that claim 13, and claims 14-17, 19 and 48 depending therefrom, are allowable over Pfiefer, Barnstead and Witthoeft.

Claims 20-23

Independent claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over USP 1,503,015 to Barnstead ("Barnstead") in view of USP 4,558,799 to Hammond ("Hammond"). This rejection is respectfully traversed.

Claim 20 has been amended to recite that the frame has an upper edge that has the same perimeter as the shell. In contrast, it was noted during the interview that the frame 2+4 in Barnstead has a four-sided upper edge and that the shell 1 in Barnstead has an oval shape. Thus, the shell 1 and the frame 2+4 in Barnstead do not have the same perimeter.

In addition, claim 20 has been amended to recite that the slot is inwardly offset from the perimeter of the frame. In contrast, the sleeve 50 (i.e., the "slot") in FIG. 5 of Hammond is positioned outside the perimeter of the shell 12. In addition, Hammond does not disclose a frame that receives a slot.

Thus, even a combination of Barnstead and Witthoeft will not yield the assembly claimed in claim 20.

During the interview, the Examiner noted that FIGS. 1 and 4 of Pfiefer might disclose a slot in the upper part 4 that receives a sleeve 13 provided along the side edge of a lid portion 11. It was suggested that the recitation "the slot being inwardly offset from the perimeter of the frame" would distinguish such an interpretation of Pfiefer, since the

slot that receives the sleeve 13 is not "inwardly offset from the perimeter of" the upper part 4.

Thus, Applicant respectfully submits that claim 20, and claims 21-23 depending therefrom, are allowable over Pfiefer, Barnstead and Hammond.

Claims 32 and 43-46

Independent claim 32 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Pfiefer in view of USP 6,386,386 to George ("George"). This rejection is respectfully traversed with respect to new claim 43.

Claim 32 has been canceled without prejudice and replaced by new independent claim 43. Claim 43 includes the base and toe-kick recess limitations from claim 32, but also recites a four-sided configuration for the shell having two lid portions. In contrast, Applicant submits that it would not be obvious to modify the trash can in Pfiefer to provide a four-sided trash can having a toe-kick recess for the pedal bar. During the interview, it was noted that Pfiefer's trash can has three sides, and that its pedal bar 15 extends outwardly from the base 3 around the entire curved front wall. In addition, although George discloses a recess for a pedal bar adjacent the bottom of its trash can, George does not disclose a separate base. Given these contrasting teachings, it would be very difficult for a person skilled in the art to start with Pfiefer and end up with the claimed assembly, because of at least the following three factors:

1. The configuration of Pfiefer's pedal bar 15 (i.e., extending outwardly from the base 3 around the entire curved front wall) is not conducive to providing a recess for receiving the pedal bar 15.

2. The skilled person would need to modify the three-sided configuration of the shell 2 in Pfiefer (having two straight side walls and a curved front wall) to obtain a four-sided trash can.

3. The skilled person would need to provide at least a portion of the recess in the base. Given the fact that George does not have a separate base, where would the skilled person position the recess? Also, the base 3 in Pfiefer would need to be significantly modified in order to receive the pedal bar 15 (e.g., the base 3 may need to be enlarged).

When these three factors are considered together, Applicant respectfully submits that it would not be proper for Pfiefer to be combined with George to reach the claimed invention because significant modifications (many of them lacking suggestion in the prior art) would need to be made. Thus, claim 43, and claims 44-47 depending therefrom, are

submitted to be allowable over Pfiefer and George.

Dependent Claim 19

Claim 19 depends from claim 13. Claim 19 was previously rejected based on a combination of Barnstead, Witthoeft and Hammond. This rejection is respectfully traversed.

Applicant respectfully submits that claim 19 defines additional patentable subject matter.

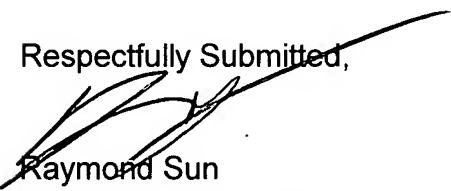
First, claim 19 has been amended to recite that the slots are positioned within the perimeter of the frame. In contrast, the sleeve 50 (i.e., the "slot") in FIG. 5 of Hammond is positioned outside the perimeter of the shell 12. In addition, Hammond does not disclose a frame that receives a slot. Thus, claim 19 is clearly distinguishable from Hammond, and even a combination of Barnstead, Witthoeft and Hammond will not yield the assembly of claim 19.

In addition, claim 19 is distinguishable from Pfiefer for the same reasons set forth above for its base claim 13.

* * *

In light of the above reasons, all pending claims are submitted to be in condition for allowance. The Examiner is encouraged to telephone the undersigned if the Examiner has any proposed amendments that can place this application in condition for allowance.

Respectfully Submitted,


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I hereby certify that this paper is being deposited with the United States Postal service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Date: February 24, 2006

By: 

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